IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 792 OF 2006

Shri Manohar Vithoba Late ...Appellant/
Orig.Deft.No.1

V/s.

Nagesh Audumber Naste & Anr. ...Respondents
Orig.Plff & Deft.No.2

Mr.K.B. Sonwalkar for the Appellant.
Mr.Vilas Topkar for Respondent No.1.

CORAM : V.M. KANADE, J.

DATED : AUGUST 27, 2007

P.C. :-

. Heard the learned Counsel for the appellant and the learned Counsel for the respondent.

2. Respondent No.1 is the original plaintiff. He filed a suit against the appellant herein for recovery of an amount of Rs.51,570/- which was due and payable by defendant no.1 for the receipt of the goods which were supplied by the plaintiff. The trial Court dismissed the suit. In appeal, however, the lower Appellate court allowed the appeal of the plaintiff and directed the respondent-appellant herein to pay the said amount with interest at the rate of 6% p.a.

3. Shri Sonwalkar, learned Counsel for the appellant submits that the lower Appellate Court erred in holding that the goods were received by him particularly when there is no documentary evidence brought on record to show that the appellant personally received the said goods which were allegedly supplied by the plaintiff. He submitted that there is no delivery challan brought on record. There was no other evidence on record. Mere formal entries made by respondent no.1 in his Books of Accounts were not sufficient to held that the appellant is liable to pay the amount of suit claim made by respondent no.1 - original plaintiff. This submission cannot be accepted. Respondent no.1 has examined respondent no.2 who was working with the appellant-original defendant and who has acknowledged having received the said goods which were duly supplied by the plaintiff. Though this fact is denied by the respondent, the fact remains that there is evidence on record in the form of admission which is given by respondent no.2 that the said goods were received by him on behalf of the appellant herein. Coupled with this

evidence, the evidence which is brought on record by the plaintiff in the form of ledger entries showing that the goods were supplied and the amount being due and payable by the appellant. In my view, this is sufficient to prove that the transaction in question has taken place. The lower Appellate Court after considering the evidence on record has recorded the finding of fact and it is not possible for this court to interfere with the said finding particularly while exercising jurisdiction under Section 100 of the CPC.

4. Shri Sonwalkar, learned Counsel for the appellant submits that the lower appellate Court has decreed the suit and directed that the plaintiff was entitled to get the 18% interest per annum from 7.11.91 to 3.3.94. The learned Counsel submits that in absence of any contract between the parties, it was not open for the plaintiff to claim 18% interest. He submitted that since the only basis on which the delivery of goods has been proved on the basis of admission of respondent no.2, the appellate Court erred in granting interest at the rate of 18% p.a.

5. In my view, the said submission will have to be accepted. The Court ought not to have granted interest at 18% p.a. in the absence of any written agreement between the parties. The rate of interest is, therefore, reduced from 18% to 9% and the decree passed by the lower appellate court is modified, accordingly.

. Second Appeal is partly allowed in the above terms.

(V.M. KANADE, J.)